

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK  
BUFFALO DIVISION

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ROY C. BARTLETT and RANDI BARTLETT,

No.: 1:12-cv-00435-RJA

Plaintiffs,

-against-

**AMENDED  
COMPLAINT**

NATIONWIDE MUTUAL FIRE INSURANCE  
COMPANY,

Defendant.

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Plaintiffs, ROY C. BARTLETT and RANDI BARTLETT, complain of Defendant  
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, as follows:

**I. Introduction**

1. This is an action for damages brought by Plaintiffs Roy C. Bartlett and Randi Bartlett against Defendant Nationwide Mutual Fire Insurance Company as a result of Defendant's breach of an insurance contract with Plaintiffs in which Defendant denied Plaintiffs' claim for losses as a result of fire damage suffered by Plaintiffs despite the fact that such losses were covered pursuant to the insurance contract.

**II. JURISDICTION AND VENUE**

2. Jurisdiction and venue of this Court was established pursuant to the removal of this action by Defendant to this Court from the Supreme Court of the State of New York, County of Wyoming.

### **III. PARTIES**

3. At all times herein mentioned, Plaintiffs Roy C. Bartlett and Randi Bartlett were and are residents of the County of Wyoming, State of New York.

4. Upon information and belief, at all times hereinafter mentioned, Defendant Nationwide Mutual Fire Insurance Company was and is an Ohio corporation with its principal place of business in Columbus, Ohio.

### **IV. FACTS**

5. On November 24, 2009, the Defendant issued and delivered its insurance policy No. 66 31 HO 485836 (hereinafter the "Insurance Policy") to the Plaintiffs, which covered the residence premises located at 6677 Pike Street, Portageville, New York 14536, for the period from January 13, 2010 to January 13, 2011, as set forth in the Homeowner Policy Declarations for the policy, attached as Exhibit A and made a part hereof. Pursuant to the Insurance Policy, the Defendant, in consideration of the Plaintiffs' payment of the premium of \$751.00, insured the Plaintiffs against loss or damage by fire for the dwelling, personal property, and loss of use in the amounts set forth in Section I of the Homeowner Policy Declarations for Property Coverages, Limits of Liability (see Exhibit A, attached hereto). The Insurance Policy also provided for Additional Property Coverages including but not limited to debris removal, and provided for additional coverage above the Coverage A limit of up to 25%.

6. The Defendant, by this Insurance Policy, agreed to cover the Plaintiffs for loss and damage by fire in an amount up to the limits of the policy set forth in Section I of the Homeowners Policy Declarations (see Exhibit A, attached hereto), during the term

of the Insurance Policy, from January 13, 2010 to January 13, 2011, as well as Additional Property Coverages and additional coverage above the Coverage A limit. Any loss would be paid within 60 days after receipt by Defendant of Plaintiffs' proof of loss and there was an agreement reached between the parties, entry of a final judgment, or the filing of an appraisal award with the Defendant.

7. On April 22, 2010, while the Insurance Policy was in full force and effect, the Plaintiffs' dwelling at 6677 Pike Street, Portageville, Town of Genesee Falls, County of Wyoming, New York 14536, together with personal property at such premises, was completely destroyed by fire.

8. The fire did not occur by any of the causes excluded by the Insurance Policy, and the losses claimed by Plaintiffs were compensable pursuant to and covered by the terms and conditions of the Insurance Policy issued by Defendant.

9. Plaintiffs made a claim for \$337,563.72 under the Insurance Policy pursuant to a Sworn Statement in Proof of Loss duly and timely submitted to Defendant, which included the amount claimed under the Insurance Policy for actual cash value for the loss of the dwelling, as well as the loss of personal property (as more particularly specified in the apportionment attached under Schedule C), none of which was paid by Defendant, except for a payment by Defendant to Plaintiffs of \$5,000.00.

10. The Plaintiffs have sustained and will continue to sustain additional living expenses because of loss of use from April 23, 2010, until Plaintiffs have been paid for their losses. Plaintiffs also incurred expenses for debris removal and cleanup that are covered by additional coverages under the Insurance Policy. Defendant paid one year of

living expenses to Defendants, and failed and refused to pay for debris removal and cleanup.

11. At the time the Insurance Policy was issued up to and including the time of the loss, the Plaintiffs were the lawful owners of the real and personal property covered and insured by the Insurance Policy, and no other person or party had any interest in any part of the premises and property. Specifically, Plaintiffs were owners in fee of the premises at 6677 Pike Street, Portageville, New York 14536 as set forth in the Homeowner Policy Declarations, attached as Exhibit A, and used the dwelling on the premises as their personal residence.

12. There was no other insurance upon any portion of the property at the time of destruction by fire.

13. Plaintiffs duly gave immediate notice of the fire and resulting loss to the Defendant, and Plaintiffs delivered to the Defendant notice and proof of the loss in accordance with the terms and conditions of the insurance policy. The Plaintiffs have fully performed all the terms and conditions as required of them under the policy.

14. Defendant failed and refused to compensate Plaintiffs for any of their losses covered by the insurance policy, and in or about June of 2011 denied the entire claim made by Plaintiffs.

15. The Defendant did not give the Plaintiffs written notice, within 30 days after the plaintiff submitted its sworn statement of loss, indicating to the Plaintiffs that the Defendant was electing to repair or replace the damaged property with equivalent property as required by the policy.

16. This action was commenced within two year(s) from the date of loss due to the fire.

17. As a result of Defendant's breach of its obligations under the Insurance Policy, \$332,563.72 is now due and owing to the Plaintiffs from the Defendant, with interest thereon, plus additional living costs after April of 2010 until Plaintiffs' loss is compensated, plus costs of debris removal and cleanup not included in the Sworn Statement in Proof of Loss.

**WHEREFORE**, Plaintiffs demand judgment against Defendant as follows:

On the Plaintiff's claim for breach of the insurance contract, the sum of \$332,563.72 together with interest, plus the cost of living expenses after April of 2010 until Plaintiffs are compensated for their loss with interest, as well as the costs of debris removal not included in Plaintiffs' Sworn Statement in Proof of Loss, with interest, and costs and disbursements of this action.

Dated: April 15, 2013

s/David M. Kaplan  
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